IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 336 OF 2003
WITH
CIVIL APPLICATION NO. 508 OF 2003

Shri Sadashiv Dnyanu Shelke ..Appellant
Vs.
Anubai d/o Dnyanu Shelke and anr. ..Respondents

Mr. P.D. Dalvi for appellant.
Mr. V.B. Rajure for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : April 16, 2007.

P.C.:

1. Heard Mr. Dalvi the learned counsel for the appellant-defendant no.1 and Mr. Rajure the learned counsel for the respondent no.1-plaintiff, Smt.Anubai.

2. There is no dispute that the plaintiff is the sister of defendant no.1 and defendant no.2 and she filed Regular Civil Suit No.60 of 1983 praying for perpetual injunction against her brothers in respect of the suit property, namely, the agricultural land located in Block No.368 of village Mohare, Taluka Panhala in District Kolhapur admeasuring about 75 R. She stated that the said suit land was purchased by

her from her father on 17/12/1980 by a registered sale deed and the consideration amount was Rs.2500/-. She further claimed that on the date of registration of the sale deed she was continuously in possession of the suit land and she was raised crops of paddy, groundnut, maize, hybrid etc. She further stated that her father died on 14/7/1981 and for about two years her possession over the suit property was not disturbed by any one, including her two brothers. However, on 1/7/1983 when she went to the suit land for sowing activities, the defendants obstructed the said activities and challenged her possession over and entering the land. It was under these circumstances she claimed for perpetual injunction against her brothers.

3. The defendants filed a joint Written Statement at Exh.23 and they denied the possession of the plaintiff over the suit land. They claimed that their father was the owner of the suit land and they did not obstruct the possession of the plaintiff. They also claimed that it was ancestral joint family property of Dnyanu and he had no right to deal with the sale,

including its alienation to any one. They claimed that the property was part of old Survey No.103 and it was subsequently on consolidation bifurcated into three different block numbers i.e. 367, 368 and 369.

4. The trial court on considering the rival submissions and the evidence adduced by both the parties recorded a finding that the plaintiff had proved her title and possession over the suit property on the basis of sale deed at Exh.69 and that the defendants were obstructing her peaceful possession and enjoyment over the suit property. Consequently, the suit was decreed by a perpetual restraining order against the defendants from interfering with the possession of the plaintiff over the suit property in whatsoever manner through themselves, their servants or agents.

5. This decree was challenged by the defendants in Regular Civil Appeal No. 137 of 1996 which came to be dismissed by the learned III Additional District Judge, Kolhapur vide his judgment and order dated 4/12/2001. The courts referred to the decision at

Exh.49 rendered in Tenancy Case No.19 of 1984 under Section 80 of the Bombay Tenancy and Agricultural Lands Act, 1948 and it was held that the evidence on record did not show that the disputed land was a tenanted land. The consolidation record at Exhs.35 to 40 submitted by the defendants was also considered and it was contended by the defendants that the suit property was a joint family property. However, both the courts below held that the sale deed at Exh.69 was duly proved to have been executed by Dnyanu and the fact that after signing of the sale deed and on its registration the plaintiff was put in possession of the suit land by Dnyanu. It was also proved by oral as well as documentary evidence. Thus having established her possession over the suit land the plaintiff was entitled for the relief of perpetual injunction and it is recorded by the courts below that the defendants will have an independent remedy of challenging the legality of the sale deed at Exh.69, if they so desired and on the basis that the suit land was not the self acquired property of Dnyanu. Mr. Rajure the learned counsel for the respondent no.1 - plaintiff rightly relied upon the judgment in the case

of Mohan Lal vs. Nihal Singh **[AIR 2001 SC 2942]** in support of his contention that once the possession over the suit land was proved, the decree of perpetual injunction must follow and the question of possession being essentially a question of fact, both the courts having recorded a concurrent finding on the said issue, there cannot be any substantial question of law for the consideration of this court in the second appeal. This submission will have to be accepted more so when both the courts below have concurrently recorded the finding that the plaintiff was in possession of the agricultural land from the time the registered sale deed was signed in her favour and, therefore, the relief of perpetual injunction granted cannot be faulted with. This second appeal does not raise any substantial question of law for the consideration of this court and, therefore, it must fail.

6. The second appeal is hereby dismissed in limine.

7. Civil Application No. 508 of 2003 does not

survive and the same shall stand disposed as such. Ad-interim order, if any, stands vacated.

(B.H. Marlapalle,J.)